

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID AUGUST KILLE, SR.,

Plaintiff,

vs.

TIMOTHY R. O'BRIEN, et al.,

Defendants.

Case No. 3:06-CV-00619-LRH-(RAM)

ORDER

Plaintiff has submitted a Motion to Set Aside Judgment Based upon Newly Discovered Evidence and Fraud (#42). The Court dismissed this action, and the Court of Appeals for the Ninth Circuit affirmed. Plaintiff complains that the Court placed itself in the position of an adverse party when it screened and dismissed this action without service of process upon Defendants. However, the law requires the Court to screen complaints by prisoners. See 28 U.S.C. § 1915A.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Set Aside Judgment Based upon Newly Discovered Evidence and Fraud (#42) is **DENIED**.

DATED this 28th day of May, 2008.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE